

VINCENT A. PEPPER  
ROBERT F. CORAZZINI  
PETER GUTMANN  
JOHN F. GARZIGLIA  
NEAL J. FRIEDMAN  
ELLEN S. MANDELL  
HOWARD J. BARR  
MICHAEL J. LEHMKUHL \*  
SUZANNE C. SPINK \*  
MICHAEL H. SHACTER  
KEVIN L. SIEBERT \*  
PATRICIA M. CHUH

\* NOT ADMITTED IN D.C.

PEPPER & CORAZZINI  
L. L. P.

ATTORNEYS AT LAW  
1776 K STREET, NORTHWEST, SUITE 200  
WASHINGTON, D. C. 20006  
(202) 296-0600

DOCKET FILE COPY ORIGINAL

GREGG P. SKALL  
E. THEODORE MALLYCK  
OF COUNSEL  
FREDERICK M. FORD  
1909-1986

TELECOPIER (202) 296-5572  
INTERNET PEPCOR@COMMLAW.COM  
WEB SITE HTTP://WWW.COMMLAW.COM

August 12, 1997

RECEIVED

AUG 12 1997

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

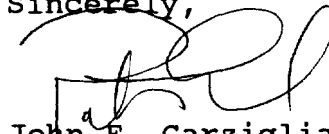
**Re: Petition for Reconsideration  
Amendment of Section 73.202(b),  
FM Broadcast Stations  
(Mt. Juliet and Belle Meade, Tennessee)  
MM Docket No. 97-97; RM-9047**

Dear Mr. Caton:

Transmitted herewith on behalf of The Cromwell Group, Inc. is an original and four copies of its Petition for Reconsideration of the Commission's Report and Order in the above-referenced rule making proceeding, released July 25, 1997.

Should any questions arise concerning this matter, please contact this office directly.

Sincerely,



John F. Garziglia  
Patricia M. Chuh

Enclosure

cc: Edward W. Hummers, Jr., Esq.  
John L. Tierney, Esq.  
Mr. David J. Waynick

No. of Copies rec'd  
List ABCDE

024

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

RECEIVED  
DOCKET FILE COPY ORIGINAL  
AUG 1 1997  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Amendment of Section 73.202(b) ) MM Docket No. 97-97  
Table of Allotments ) RM-9047  
FM Broadcast Stations )  
(Mt. Juliet and Belle Meade, Tennessee) )  
  
To: Chief, Allocations Branch

**PETITION FOR RECONSIDERATION**

Cromwell Group, Inc. ("Cromwell"), by its attorneys, hereby respectfully requests reconsideration of the Commission's Report and Order, MM Docket No. 97-97, DA 97-1559, released July 25, 1997, reallocotting Channel 294A from Mt. Juliet to Belle Meade, Tennessee in the above-referenced rule making proceeding ("Report and Order"), pursuant to Section 1.106(c)(1) of the Commission's Rules.<sup>1/</sup> Because the Commission adopted its Report and Order

---

<sup>1/</sup> The instant petition for reconsideration is timely filed pursuant to 47 C.F.R. §1.106(f). Public Notice of the Commission's Report and Order in this rule making proceeding was released on July 25, 1997. The Cromwell Group, Inc. has standing to file the instant petition for reconsideration. Mr. Walters, the President and 100% stockholder of the Cromwell Group, Inc. is also President and 100% stockholder of WYCQ, Inc., the licensee of WZPC(FM), Shelbyville, Illinois and Montgomery Broadcasting, Inc., the licensee of WQZQ-FM, Dickson, Tennessee. The broadcast service provided by the reallocotment of Channel 294A from Mt. Juliet to Belle Meade, Tennessee and the modification of the construction permit for WNPL(FM) to specify operation on Channel 294A at Belle Meade, Tennessee will overlap the service presently provided by WZPC(FM) and WQZQ-FM. Thus, WNPL(FM) will compete directly with WZPC(FM) and WQZQ-FM for listeners and advertising revenues. Under these circumstances, the Cromwell Group, Inc., owned 100% by Mr. Bayard H. Walters, has standing as a party in interest to file the instant petition for reconsideration under § 402(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 402(b) and FCC v. Sanders Brothers Radio Station, 309 U.S. 470, 60 S.Ct. 693 (1940).

prior to the submission of Cromwell's Comments, filed on July 21, 1997, which presented controlling authority concerning technically defective allotments, the Commission should reconsider its decision to reallocate 294A to Belle Meade, Tennessee. In support whereof, the following is respectfully submitted:

#### **Background**

1. The above-referenced rule making proceeding was initiated by a Petition for Rule Making and Request for Modification of Authorization filed by Mt. Juliet Broadcasting, Inc. ("MJB"), the permittee of station WNPL, Channel 294A, Mt. Juliet, Tennessee, on February 21, 1997.<sup>2/</sup> MJB sought to reallocate Channel 294A from Mt. Juliet, Tennessee to Belle Meade, Tennessee and to ultimately modify the WNPL construction permit to specify operation on Channel 294A at Belle Meade, Tennessee. On March 21, 1997, the Commission released a Notice of Proposed Rule Making ("NPRM") seeking comment on MJB's proposed allotment plan. In its NPRM, the Commission established May 12, 1997 as the deadline for filing comments and May 27, 1997 as the deadline for reply comments. Cromwell filed its Comments and Motion for Acceptance of Late-Filed Comments on July 21, 1997. On July 16, 1997, however, **before** Cromwell's Comments were filed, the Commission

---

<sup>2/</sup> Also on February 21, 1997, MJB filed an application to modify the construction permit for WNPL(FM), Mt. Juliet Tennessee (BMPH-970221ID) ("Modification Application"). Because MJB's Modification application was filed in direct violation of section 73.203 of the Commission's Rules, among other things, the Cromwell Group, Inc., by its attorneys, filed an Informal Objection pursuant to section 73.3587 of the Commission's Rules on July 16, 1997.

adopted its Report and Order, which was released by public notice on July 25, 1997.

### **Argument**

2. Because the Commission adopted its Report and Order, on July 16, 1997, **before** it could consider the controlling and dispositive authority presented in Cromwell's Comments, filed on July 21, 1997, the Commission should reconsider its decision to reallocate 294A to Belle Meade, Tennessee, pursuant to 47 C.F.R. § 1.106(c)(1). Neither MJBFI nor the parties filing comments addressed or discussed the Commission's controlling authority concerning the appropriate remedy for a defective allotment.<sup>3/</sup>

3. In its Comments and Reply Comments filed in this rule making proceeding, MJBFI asserted that the allotment of Channel 294A to Mt. Juliet, Tennessee is defective due to predicted electromagnetic interference ("EMI") to FAA navigational radio facilities. According to MJBFI, the allotment of Channel 294A to Mt. Juliet could not be implemented because of this interference and thus, the allotment is technically defective. Comments of MJBFI, MM Docket No. 97-97, May 12, 1997; Reply Comments of MJBFI, MM Docket No. 97-97, May 27, 1997. Similarly, MJBFI also declared in its Modification Application that the allotment of Channel 294A to Mt. Juliet is defective because "it is not possible for WNPL to operate on Channel 294A from any location which will provide the required city grade coverage to Mount Juliet while also

---

<sup>3/</sup> Comments were timely filed by Great Southern Broadcasting Company, Inc. and David J. Waynick, Mayor of Mt. Juliet, in this rule making proceeding.

eliminating the FAA's concerns regarding EMI." Modification Application, Section 1.0 of Engineering Statement. If such is indeed the case, the appropriate remedy is the deletion of Channel 294A at Mt. Juliet, Tennessee.

4. The Commission routinely deletes channel allotments when a channel allotment cannot be implemented because there is no technically feasible transmitter site that complies with the Commission's Rules. See e.g., San Clemente, California, 10 FCC Rcd 8291, para. 6 (1995) (deletion of channel appropriate because there is no available fully spaced site in compliance with the Commission's technical allotment requirements)<sup>4/</sup>; see also Letter from Dennis Williams, Assistant Chief, Audio Services Division, Mass Media Bureau, to ECI License Company, Inc., 11 FCC Rcd 1797, 1800 (1996) (deletion of the substandard allotment is appropriate when a short-spaced transmitter site is necessary before the allotment can be used); Harkers Island, North Carolina, 10 FCC Rcd 13159, para. 3 (1995) (deletion of allotment appropriate when no site complies with the Commission's minimum separation and principal city coverage requirements); Atlantic City, New Jersey, 57 RR 2d 1436, para. 8 (1985) (channel deletion appropriate where allotment of channel was based on specific representation by the petitioner that an offshore transmitter site was

---

<sup>4/</sup>There was a site location that would accommodate Channel 285A at San Clemente, California. However, this site was located on the grounds of Camp Pendleton and the U.S. Marine Corps would not approve the construction of a commercial broadcast tower on military property. Thus, the Commission concluded that the allotment of Channel 285A at San Clemente, California no longer served the public interest. 10 FCC Rcd 8291, paras. 2, 6.

available); Pinckneyville, Illinois, 41 RR 2d 69 (1977) (allotment deleted because there was no showing that a transmitter site meeting the Commission's technical requirements was available). Similarly, the defective allotment of Channel 294A to Mt. Juliet, Tennessee should be deleted.

5. The Commission should also reconsider its decision to adopt MJB I's proposed allotment plan because MJB I accepted the grant of its construction permit for WNPL with full knowledge that the allotment of Channel 294A to Mt. Juliet, Tennessee could create a hazard to air navigation. MJB I was notified as early as June 27, 1990 that the Mt. Juliet allotment "would cause substantial adverse effects upon air navigation." See FAA Termination of Aeronautical Study of Proposed Construction or Alteration, April 19, 1991, hereto attached as Exhibit No. 1.<sup>5/</sup> Thereafter, MJB I filed an amendment to its construction permit application on July 31, 1991. In its amendment, MJB I expressly stated that it would accept the grant of the WNPL construction permit with the following condition:

Upon receipt of notification from the Federal Communication Commission that harmful interference is being caused by the operation of the licensee's [permittee's] transmitter, the licensee [permittee] shall either immediately reduce the power to the point of no interference, cease operations, or take such immediate corrective action as necessary to eliminate the harmful interference.

---

<sup>5/</sup> MJB I acquired the WNPL permit in the name of Jamal Broadcasting, L.P. as the result of a settlement agreement in a comparative proceeding, MM Docket No. 91-94. Jamal Broadcasting, L.P. subsequently assigned the permit to MJB I, a corporation owned by Jamal Broadcasting, L.P. (FCC File No. BAPH-960424GG).

See Amendment to application of Jamal Broadcasting, L.P., July 31, 1991 (FCC File No. BPH-891011MJ), hereto attached as Exhibit No. 2. MJBFI cannot now seek to change the community of license for WNPL based upon Section 1.420(i) of the Commission's Rules, when it accepted its construction permit with the full knowledge that EMI interference would likely result in a technically defective allotment. The Commission should, therefore, reconsider its adoption of MJBFI's allotment plan and delete the defective allotment of Channel 294A at Mt. Juliet, Tennessee.<sup>5/</sup>

6. Conclusion. For the foregoing reasons, the Commission should reconsider its decision in Report and Order, DA 97-1559, released July 25, 1997, reallocoting Channel 294A from Mt. Juliet to Belle Meade, Tennessee and delete the allotment of Channel 294A to Mt. Juliet, Tennessee.

Respectfully submitted,

THE CROMWELL GROUP, INC.

By: 

John F. Garziglia  
Patricia M. Chuh  
Its Attorneys

PEPPER & CORAZZINI, L.L.P.  
1776 K Street, N.W.  
Suite 200  
Washington, D.C. 20006  
(202) 296-0600

August 12, 1997

---

<sup>5/</sup> If Channel 294A is to be allotted to Belle Meade, Tennessee, fairness demands that the Commission provide an opportunity for interested parties to file applications and possibly bid at an upcoming auction.

TERMINATION OF  
AERONAUTICAL STUDY OF PROPOSED CONSTRUCTION OR ALTERATION

SPONSOR	Michael Grant 505 Piccadilly Row, #202 Nashville, TN 37013	CONSTRUCTION LOCATION	
		PLACE NAME	
		Nashville, TN	
CONSTRUCTION PROPOSED	DESCRIPTION FM. RADIO ANTENNA TOWER 106.7 MHz; 6 KW ERP	LATITUDE	LONGITUDE
		36°10'30"	86°40'08"
		HEIGHT (FEET)	
		ABOVE GROUND	ABOVE MSL
		73	.848

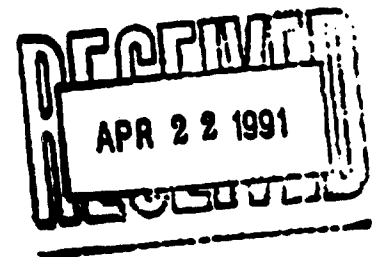
Our June 27, 1990 letter notified you that your proposed construction would cause substantial adverse effects upon air navigation.

The letter stated that the proposal would cause intermodulation interference to aircraft making an instrument landing system (ILS) approach to Runway 32 at Smyrna Airport and Runways 31, 2L, and 20R at Nashville International Airport.

No reply to this notice was received, therefore, the aeronautical study is terminated.

If you desire to reactivate the construction proposal, please use the enclosed FAA Form 7460-1.

cc: FCC  
ASO-483  
Lechman & Johnson, Inc.



SIGNED Robert L. Shipp, Jr. TITLE Airspace Specialist  
ISSUED AT East Point, GA ON April 19, 1991  
System Management Branch

AIRPORT MANAGERS - PLEASE POST

COMMENTS INVITED



In re Applications of ) MM Docket No. 91-84  
Grady Lynn and Carol Lynn )  
d/b/a Lynn Broadcasting ) File No. BPH-891011MJ  
et al. )  
For Construction Permit for )  
a New FM Station on Channel )  
294A, Mt. Juliet, Tennessee )

To: Hon. Edward Kuhlmann, Administrative Law Judge

**AMENDMENT**

Jamal Broadcasting, L.P. ("Jamal") respectfully amends its application: (1) to report that on July 3, 1991, the FAA issued an air hazard determination for its proposed site, finding that while the site does not exceed the obstruction standards of Federal Aviation Regulations, Part 77, it would have an adverse impact on aircraft based on electromagnetic interference (EMI); and (2) to reconfirm that it will accept the imposition of the following condition upon any grant of its application:

Upon receipt of notification from the Federal Communications Commission that harmful interference is being caused by the operation of the licensee's [permittee's] transmitter, the licensee [permittee] shall either immediately reduce the power to the point of no interference, cease operation, or take such immediate corrective action as necessary to eliminate the harmful interference. This condition expires after one year of interference-free operation.

I declare under penalty of perjury under the laws of the United States of America that the representations made in the foregoing "Amendment" are true and correct to the best of my knowledge and belief.

Executed

J. G. 31, 1991

Michael Grant  
Michael Grant  
General Partner

**CERTIFICATE OF SERVICE**

I, Denise A. Branson, secretary in the law firm of Tierney & Swift hereby certify that I have sent by first-class mail, postage prepaid this 12th day of May, 1997, copies of the foregoing COMMENTS to the following:

Edward W. Hummers, Jr., Esquire  
Holland & Knight LLP  
2100 Pennsylvania Avenue, NW  
Suite 400  
Washington, D.C. 20037-3202  
(Counsel for MJB)

  
Denise A. Branson  
Denise A. Branson

**CERTIFICATE OF SERVICE**

I, Lisa Skoritoski, a secretary in the law firm of Pepper & Corazzini, L.L.P., certify that the foregoing Petition for Reconsideration were mailed on this 12th day of August, 1997 to the following by first class mail, postage prepaid.

Edward W. Hummers, Jr., Esq.  
Holland & Knight  
2100 Pennsylvania Avenue, N.W.  
Suite 400  
Washington, D.C. 20037-3202  
Counsel for Mt. Juliet Broadcasting, Inc.

John L. Tierney, Esq.  
Tierney & Swift  
1001 Twenty-Second Street, N.W.  
Suite 350  
Washington, D.C. 20037  
Counsel for Great Southern Broadcasting Co., Inc.

Mr. David J. Waynick  
Mayor of Mt. Juliet  
City Hall  
2425 Mt. Juliet Road  
Mt. Juliet, TN 37122

  
\_\_\_\_\_  
Lisa Skoritoski